

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 CATHY ANN BRYANT,) Case No. CV 15-2353-PJW
11 Plaintiff,)
12 v.) MEMORANDUM OPINION AND ORDER
13 CAROLYN W. COLVIN,)
14 Acting Commissioner of the)
15 Social Security Administration,)
16 Defendant.)
17

18 I. INTRODUCTION

19 Plaintiff appeals a decision by Defendant Social Security
20 Administration ("the Agency"), denying her application for
21 Supplemental Security Income ("SSI"). She claims that the
22 Administrative Law Judge ("ALJ") erred when he rejected the opinion of
23 her treating psychiatrist and when he found that she could perform
24 work requiring a reasoning level of two or more. For the following
25 reasons, the Court concludes that the ALJ erred and remands the case
26 to the Agency for further proceedings.

27 II. SUMMARY OF PROCEEDINGS

28 In September 2011, Plaintiff applied for SSI, alleging that she
had been disabled since April 1996, due to degenerative disc disease,

1 carpal tunnel syndrome, high blood pressure, shoulder pain, heart
2 problem, dizziness, anxiety, and depression. (Administrative Record
3 ("AR") 82, 104, 231.) Her application was denied initially and on
4 reconsideration and she requested and was granted a hearing before an
5 ALJ. In September 2013, she appeared with counsel and testified at
6 the hearing. (AR 34-66.) Thereafter, the ALJ issued a decision
7 denying benefits. (AR 12-24.) Plaintiff appealed to the Appeals
8 Council, which denied review. (AR 1-8.) She then filed the instant
9 action.

10 III. ANALYSIS

11 A. The Treating Doctor's Opinion

12 Plaintiff contends that the ALJ erred when he rejected treating
13 psychiatrist Lanlan Wang's opinion that Plaintiff's affective disorder
14 met Listing 12.04 and that she would experience significant
15 difficulties in nearly every aspect of daily functioning. (AR 481-
16 84.) The ALJ relied, instead, on the opinions of the examining
17 psychiatrist and psychologist who concluded that she was not so
18 impaired. (AR 18, 23.) For the following reasons, the Court finds
19 that the ALJ did not err here.

20 It is the province of the ALJ to resolve conflicts in the medical
21 evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
22 Generally speaking, three types of doctors supply this evidence:
23 treating doctors, examining doctors, and reviewing doctors. All
24 things being equal, treating doctors' opinions are entitled to the
25 greatest weight because they are hired to cure and have more
26 opportunity to know and observe the patient. *Id.* at 1041; see also
27 C.F.R. 416.927(d)(2) ("Generally, we give more weight to opinions from
28 your treating sources, since these sources are likely to be the

1 medical professionals most able to provide a detailed, longitudinal
2 picture of your medical impairment(s) and may bring a unique
3 perspective to the medical evidence that cannot be obtained from the
4 objective medical findings alone or from reports of individual
5 examinations"). ALJs, however, are not required to merely accept the
6 opinion of any doctor and, where the opinion is contradicted, may
7 reject it for specific and legitimate reasons that are supported by
8 substantial evidence in the record. *Lester v. Chater*, 81 F.3d 821,
9 830 (9th Cir. 1995).

10 Dr. Wang began treating Plaintiff in March 2012. (AT 478.) In
11 February 2013, he completed a Mental Disorders Questionnaire form on
12 which he reported that Plaintiff's history "suggests repeated episodes
13 of decompensation with periods of symptom exacerbation." (AR 478.)
14 He noted that she had shown little improvement with treatment and
15 complained of suicidal thoughts and hallucinations. (AR 478, 479.)
16 He concluded that she would not be able to complete a normal workday
17 or workweek without interruptions; would have difficulty performing
18 activities within a schedule, maintaining attendance, sustaining a
19 routine, staying focused, remembering and carrying out instructions,
20 coping with changes in environment, and interacting and communicating
21 effectively with others. (AR 482-83.)

22 Dr. Wang's assessment that Plaintiff met Listing 12.04 and was
23 otherwise unable to perform any type of full-time work conflicted with
24 the opinions of the examining psychiatrist and psychologist, both of
25 whom thought that she could, at a minimum, follow simple instructions
26 and interact with others. (AR 371, 495.) The ALJ gave three reasons
27 for rejecting Dr. Wang's opinion and relying on the examining doctors'
28 opinions instead: (1) Dr. Wang's finding that Plaintiff experienced

1 repeated episodes of decompensation was not supported by the medical
2 evidence; (2) Dr. Wang relied on Plaintiff's subjective complaints,
3 which the ALJ rejected; and (3) Dr. Wang's opinion that Plaintiff was
4 severely limited in her ability to function was not consistent with
5 the routine treatment that he provided her or with her apparent
6 improvement with treatment. (AR 18.)

7 The ALJ's first justification is supported by substantial
8 evidence in the record. Plaintiff told Dr. Wang that she had suffered
9 from depressive and manic episodes since childhood, which were made
10 worse by the sudden death of her teenage son and subsequent loss of
11 her job and home. (AR 478.) Based on her account, Dr. Wang found
12 that she must have suffered from repeated episodes of decompensation
13 and a concomitant loss of functioning in daily activities, social
14 functioning, concentration, and task completion. (AR 478.) There is
15 no medical evidence in the record to support Dr. Wang's finding,
16 however.

17 Pursuant to the Listings, episodes of decompensation:
18 may be inferred from medical records showing significant
19 alteration in medication; or documentation of the need for a more
20 structured psychological support system (e.g., hospitalizations,
21 placement in a halfway house, or a highly structured and
22 directing household); or other relevant information in the record
23 about the existence, severity, and duration of the episode.
24 Listing 12.04, Paragraph C.

25 There is no evidence of significant changes in Plaintiff's
26 medication regimen or a need for a more structured support system. On
27 the contrary, Plaintiff's March 2012 initial mental health assessment
28 noted that she had never been hospitalized for mental health

1 treatment. (AR 385.) Plaintiff told the examining psychologist the
2 same thing. (AR 491.) Further, she told the examining psychiatrist
3 that she only received "outpatient treatment or counseling" in 2005,
4 though she had been "on and off" psychiatric medications for years.¹
5 (AR 368, 369.) Because there was no evidence to support Dr. Wang's
6 finding that Plaintiff had suffered from a severe psychiatric
7 condition since childhood, this was a legitimate reason for
8 questioning his opinion.

9 The ALJ also questioned Dr. Wang's opinion because he relied
10 "heavily" on Plaintiff's subjective complaints that the ALJ found less
11 than credible, a finding Plaintiff has not challenged. (AR 18, 20-
12 22.) This, too, is a legitimate reason for discounting a doctor's
13 opinion, see *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
14 (9th Cir. 2009) (affirming ALJ's discounting of treating doctor's
15 opinion that was based on claimant's subjective characterization of
16 her symptoms which the ALJ found was not credible), and it is
17 supported by substantial evidence. Although Dr. Wang's opinion was
18 presumably also based on the mental status examination of Plaintiff
19 that he conducted at the time that he completed the questionnaire, the
20 findings from that exam were generally unremarkable. For example, Dr.
21 Wang noted that her eye contact was normal, her interview behavior was
22 cooperative, and her insight and judgment fair. (AR 480.) Although
23 he also found her mood and affect to be dysphoric (AR 480-81), his
24 conclusions regarding her ability to function appear to be based

25
26 ¹ Plaintiff told the ALJ that she had been taking medications
27 for her mental state "off and on for maybe 17, 18 years," but
28 acknowledged that when she was taking her medications, she was "okay."
(AR 39.)

1 largely on her reportedly limited daily activities and her claim that
2 she experienced hallucinations. (AR 480-83.) By contrast, the ALJ
3 found that Plaintiff was able to follow the questioning at the
4 administrative hearing and was doing much better on medications,
5 noting that she was able to go to the movies with her daughter, travel
6 on a bus to visit her son in Fresno, and drive to Arizona, which
7 suggested that she was far more functional than she claimed. (AR 18-
8 19, 38, 50-51, 53.) Notably, Plaintiff has not challenged the ALJ's
9 findings that she was capable of extensive daily activities and that
10 she was less than credible. As such, the Court concludes that the ALJ
11 was entitled to rely on the fact that Dr. Wang's opinion was based in
12 part on Plaintiff's statements about her condition, which the ALJ
13 discounted.

14 Finally, the ALJ questioned Dr. Wang's opinion because the record
15 disclosed that he provided her only routine treatment, which caused
16 her symptoms to improve. (AR 18.) Generally speaking, this, too, is
17 a legitimate reason for rejecting a treating doctor's opinion. See
18 *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001) (holding ALJ
19 entitled to reject treating doctor's opinion based, in part, on
20 conservative course of treatment). The record is mixed, however, on
21 this issue.

22 Between March 2012 and June 2013, Dr. Wang saw Plaintiff almost
23 every month. (AR 412-33, 453-89, 511-23.) During that period, he
24 prescribed varying amounts of various psychiatric medications,
25 including Effexor, Seroquel, Zoloft, and Lithium, in an attempt to
26 control her psychotic symptoms and to eliminate side effects from the
27 medications. (AR 426 (replacing Seroquel with Abilify), 423 (ceasing
28 treatment with Lithium), 520 (increasing Seroquel dosage), 522

1 (lowering Seroquel dosage.) Although Plaintiff reported at times that
2 she was doing better, (AR 424 (July 27, 2012), 466 (December 5, 2012),
3 521 (April 30, 2013)), at other times, she complained of crying,
4 sadness, anxiety, and hallucinations. (AR 422 (September 26, 2012),
5 423 (August 29, 2012), 519 (June 28, 2013), 520 (May 30, 2013), 522
6 (March 12, 2013).) Thus, the record only partially supports the ALJ's
7 finding that Plaintiff's condition improved during this period. See,
8 e.g., *Holohan v. Massanari*, 246 F.3d 1195, 1207 (9th Cir. 2001)
9 (holding ALJ's rejection of physician's opinion was not supported by
10 substantial evidence where ALJ selectively relied on records
11 indicating improvement and ignored others that showed continued
12 impairment).

13 As for Dr. Wang's treatment, the Court is inclined to agree that
14 his approach, which consisted of medications and therapy, is on the
15 conservative side. On the other hand, the ALJ did not explain what
16 more aggressive modes of treatment were available and/or that
17 Plaintiff was offered such treatment and declined.

18 Even were the Court to reject this third reason for discounting
19 Dr. Wang's opinion, however, the ALJ's other two reasons are
20 sufficient to uphold his decision to reject Dr. Wang's opinion. As
21 such, it is affirmed. See *Carmickle v. Comm'r, Soc. Sec.*, 533 F.3d
22 1155, 1162-63 (9th Cir. 2008) (holding error is harmless if
23 substantial evidence remains to support the ALJ's conclusion).

24 B. The Residual Functional Capacity Determination

25 The ALJ determined that Plaintiff would be able to perform medium
26 work so long as it consisted of one-to-two-step instructions with no
27 public contact. Relying on the opinion of a vocational expert, he
28 found that she could work as a hand packager, linen room attendant,

1 and hospital cleaner. (AR 19, 24, 59.) Plaintiff contends that her
2 limitation to one- and two-step instructions means that she cannot
3 perform these jobs because, according to the Dictionary of
4 Occupational Titles ("DOT"), they require a Reasoning Level Two (hand
5 packager, hospital cleaner) and Three (linen room attendant). (Joint
6 Stip. at 5-9; DOT. No. 920.587-018 (hand packager), No. 323.687-010
7 (hospital cleaner), No. 222.387-030 (linen room attendant).) The
8 Agency argues that the ALJ properly relied on the vocational expert's
9 testimony. (Joint Stip. at 10-13.) For the following reason, the
10 Court sides with Plaintiff.

11 Since the ALJ issued his decision, the Ninth Circuit Court of
12 Appeals has held that a limitation to one- and two-part instructions
13 is commensurate with Reasoning Level 1, not Reasoning Level 2. *Rounds*
14 *v. Comm'r Soc. Sec. Admin.*, 807 F.3d 996, 1002-03 (9th Cir. 2015)
15 (holding conflict exists between limitation to one- and two-step tasks
16 and demands of Level Two reasoning). Even though the vocational
17 expert testified that her opinion was consistent with the DOT (AR 59),
18 as per *Rounds*, there is an apparent conflict between the DOT and the
19 vocational expert's testimony which the ALJ must address on remand.
20 *Id.* at 1004. If the ALJ determines that Plaintiff cannot perform
21 these jobs, he will then have to determine if there are any other jobs
22 in the economy that she can perform despite her limitation to jobs
23 involving one- and two-part instructions.²

24
25 ² The vocational expert testified in response to another
26 question from the ALJ that an individual who could perform simple,
27 repetitive tasks (rather than one- or two-step tasks) could perform
28 the three jobs she identified. (AR 59-60.) The ability to perform
simple, repetitive tasks is consistent with Reasoning Level Two. See
Terry v. Astrue, 580 F.3d 471, 478 (7th Cir. 2009); *Meissl v.*
Barnhart, 403 F. Supp.2d 981, 984 (C.D. Cal. 2005). Because the ALJ

IV. CONCLUSION

The ALJ's decision is reversed and the case is remanded for further consideration consistent with this Memorandum Opinion and Order.

IT IS SO ORDERED.

DATE: July 5, 2016



PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE

S:\PJW\Cases-Social Security\BRYANT, C 2353\Memo opinion.wpd

expressly declined to adopt that limitation or the examining psychologist's opinion on which it was based (AR 23, 495), however, the vocational expert's testimony in that regard does not render the ALJ's error harmless.